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THE WHITE HOUSE

WASHINGTON

July 27, 1973

MINUTES OF JULY 11, 1973
MEETING OF THE INTERAGENCY CLASSIFICATION
REVIEW COMMITTEE

Participants:

Dr. James B. Rhoads - Acting Chairman
David O. Cooke - Defense
Osborne A. Day - NSC
Robert G. Dixon - Justice
Mark B. Feldman - State

[REDACTED]

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Charles L. Marshall - AEC
James E. O'Neill - Archives

Attending:

Robert Blake - State

[REDACTED]

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Joseph Liebling - Defense
Douglas Marvin - Justice
William Nichols - OMB
Adrienne Thomas - Archives

Proceedings:

Dr. Rhoads first introduced Ambassador Robert Blake to the members. Ambassador Blake has agreed to chair the Ad Hoc Group on Exemption Authority and Classification Guides.

Dr. Rhoads made the following announcements:

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1. Although he has retired as [REDACTED]

[REDACTED]

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2. At the last meeting, Dr. Rhoads felt that he was very close to finding a permanent replacement for Mr. Tufaro, the Executive Director of the Committee. However, the individuals whom he had in mind have decided to remain in their present positions. He asked the Committee members

to submit names of individuals whom they think may be suitable for the position of Executive Director. Although not absolutely necessary, it is highly desirable that prospective candidates be lawyers. The level of the position is about GS-13 or 14. Dr. Rhoads introduced Adrienne Thomas who is acting in Mr. Tufaro's place until a permanent replacement is hired.

Agenda items were then discussed:

1. The Committee members were asked if there were any corrections to be made in the Minutes of the last meeting. Mr. Feldman questioned whether there had actually been a "consensus" (page 6 - Item E) on the issue of classifying information received from outside the Government. Members felt that a consensus had been reached and, therefore, the Minutes were accurate.

Discussion continued regarding agency procedures for classifying information received from outside the Government. Mr. Marshall indicated that when AEC receives sensitive information from sources outside the Government, the information is classified and arrangements are made to protect other existing copies of the information wherever they may be located.

Members felt that sensitive material received from sources outside Government can legally be classified. Mr. Marvin pointed out that the Executive Order deals with classification of "official information." The question of whether material originating outside Government can be considered "official information" is not answered in the Order. It was decided that Justice would study the question and prepare an opinion for the Committee. It was also suggested that Justice determine the position of departments and agencies not having original classifying authority to protect sensitive non-governmental information coming into their possession.

2. Dr. Rhoads stated that the question of whether the ICRC has discretionary authority in dealing with declassification appeals on material more than 30 years old and Presidential papers more than 10 years old was the remaining issue to be decided before adoption of the ICRC Appeals Procedures.

Committee members had previously received a memorandum from Dr. Rhoads suggesting changes in the Appeals Procedures which would require the ICRC to accept all appeals falling into either of these two categories. The new language would make the Appeals Procedures consistent with Section III (D) of the NSC Directive.

Mr. Feldman expressed the opinion that a mandatory appeal provision might produce an unmanageable workload for the ICRC. Mr. Marshall asserted that the "right to appeal" as specified in the NSC Directive does not necessarily constitute the right to a substantive review of that appeal. Discretionary authority ought to be written into the Appeals Procedure.

Several Committee members felt that legally the Committee might not have any choice about conducting substantive reviews of all appeals for 30 year old material. However, they thought that the argument for accepting all appeals for 10 year old Presidential documents was not as persuasive. Dr. Rhoads was asked whether or not an Archives Review Committee could be established to deal with these appeals. Dr. Rhoads expressed doubt concerning the feasibility of such a plan.

Dr. Rhoads asked for a vote on the matter of giving the ICRC discretionary authority to review appeals for documents falling into these two categories. The vote was four to three in favor of discretionary authority with the following distribution of votes: NO - NARS, CIA, Defense; YES - AEC, State, NSC, Justice.

Dr. Rhoads noted that during its first year of operation the Committee had received very few appeals. Mr. Dixon said that the Committee would receive more appeal cases as the public became more familiar with the Executive Order. He pointed out that this had been the history of operation of the Freedom of Information Act. The number of cases increased steadily as the public learned more about it.

Mr. Marvin suggested that the solution to the problem would be to reserve the Committee's discretionary authority in the Appeals Procedure but for the members to agree that as a matter of policy all appeals on such material would be accepted for substantive review. The Committee members agreed that this was a practical solution. The Justice Department was asked to provide language for the Appeals Procedure which would reflect discretionary authority. This language will be circulated to Committee members for final approval before publication in the Federal Register.

3. Mr. Dixon presented the Justice Department decision regarding the ICRC's authority over the CIA's declassification appeals cases. The opinion expressed the following points:

- (a) The ICRC has jurisdiction over CIA declassification appeals cases.

No. The
issue is
is 5+ in info,
not CIA info.

- (b) The CIA does not have the same sort of statutory exemption for intelligence sources and methods that AEC has for Restricted Data and Formerly Restricted Data.
- (c) ICRC cannot legally limit its own authority so as to exclude consideration of cases involving intelligence sources and methods.
- (d) Justice stated that even if the ICRC could limit its jurisdiction in these cases, that it should not do so.
- (e) Justice believes the only way to alter ICRC's jurisdiction to exclude consideration of CIA appeal cases is to amend the Executive Order. Justice advises against such a move.

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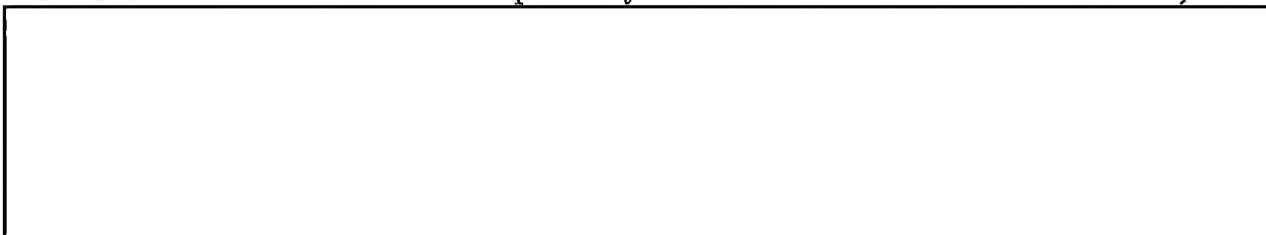
[] replied that he would discuss the decision with Mr. Colby, before pursuing the matter further.

Mr. Feldman pointed out that this decision would affect not only CIA but all intelligence gathering agencies. He went on to say that the Executive Order had obviously been written with the intention of giving the ICRC jurisdiction over material involving intelligence sources and methods. Section 5 (B)(2) of E.O. 11652 deals precisely with such documents. Mr. Lieblich, who participated in the revision of E.O. 10501, said that the sensitivity of such material was recognized and it had, therefore, been included in an exemption category.

4. Mr. Day presented the status report on the Stueck appeal. The Korean papers had been forwarded to Dr. Kissinger for final approval after the ICRC voted for their declassification. At that time, Dr. Kissinger opposed declassification of the material. NSC will soon resubmit the Stueck materials and other related documents to Dr. Kissinger.

5. Dr. O'Neill gave a report on Mr. Clay Blair's request for declassification of intercepted Japanese messages from World War II. This request has been pending for over a year. Defense has stated that based on the substance of the intercepts they could be declassified. However,

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Mr. Day suggested that the issue should be submitted to the U.S. Intelligence Board, using the Japanese intercepts as a case in point. Dr. O'Neill agreed with Mr. Day and suggested that it might also cause an acceleration of USIB's issuance of new guidelines on protection of intelligence sources and methods. He also recommended that Mr. Dixon's memo regarding ICRC's jurisdiction over CIA declassification appeal cases be included with the material submitted to USIB.

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 asked whether Mr. Blair had been advised of his right to appeal to the ICRC. Mr. Liebling said he would get the answer from Dr. Winnacker of the Historical Office in OSD who has been working on the case.


It was determined that if Dr. Winnacker had not already submitted the question to USIB then the ICRC would assume responsibility for doing so. Mr. Dixon proposed that in order to avoid such delays in handling declassification requests in the future, a seminar on taking more efficient action in responding to declassification requests should be held.

6. Ambassador Blake reported that the Ad Hoc Group on Exemption Authority and Classification Guides was scheduled to meet the next day. He felt that a first draft would be completed by the end of the month and that the Group would have a finished proposal by the September 15 deadline. Dr. Rhoads emphasized that the ICRC attaches great significance to the work of this group.

Items not on the agenda were also discussed:

1. Dr. Rhoads circulated a draft memorandum on Departmental Inspector Programs which is to be sent to all Departmental Review Committee Chairmen. Committee members were asked to comment on the content of the memorandum by July 19.

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2. Dr. O'Neill reported a subcommittee consisting of Richard Tufaro,  Mark Spiegel (State), and himself had begun work on the question of the relationship of E.O. 11652 to foreign classified information. The subcommittee had decided to pose certain legal questions to the Justice Department for an opinion before proceeding to develop procedures for handling foreign classified material. The letter, which will

soon be sent to the Justice Department, will be circulated to ICRC members for their information.

3. The next ICRC meeting was scheduled for August 8 at 10:00 a.m.